IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8537 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAMNAGAR AREA DEVELOPMENT AUTHORITY (JADA)

Versus

HASMUKH RAMJIBHAI CHAUHAN

Appearance:

MR NIRAV C THAKKAR for the Petitioner.

MR PANKAJ R DESAI for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/07/2003

ORAL JUDGEMENT

Rule. With the consent of the parties, the matter is taken up for final hearing today.

By filing this petition, the petitioner, Jamnagar Area Development Authority, has challenged the Award

passed by the Labour Court, Jamnagar in Reference (LCJ) No.194 of 1995. By the aforesaid Award, the Labour Court allowed the Reference of the respondent-workman by reinstating him on his original post, with 85% back wages. The said order is challenged by the petitioner-Authority by way of filing this Special Civil Application.

It is required to be noted that there is a specific finding to the effect that the respondent-workman continuously worked from 21.1.1992 as Chowkidar, till the date of oral termination of his service on 29th August, 1994. The Labour Court has considered this aspect in paragraph 9 of the Award. It has been found by the Court that even though a specific order was passed against the petitioner to produce certain documents, no such documents were produced before the Court. Under the circumstance, it was found that the action of the petitioner in terminating the services of the respondent-workman is contrary to the provisions of Section 25-G and Section 25-H of the I.D. Act. It is also found that the procedure of Section 25-F is not followed. This fact, as such, is not in dispute. In view of the clear finding of fact arrived at by the Labour Court on appreciation of evidence, this Court cannot re-appreciate the evidence in a petition filed under Article 226/227 of the Constitution of India. Even otherwise, the petitioner has not produced any satisfactory evidence worth the name before the Labour Court to substantiate its say in any manner. Under the circumstances, so far as the order of reinstatement is concerned, the said order cannot be interfered with by this Court.

So far as the payment of back wages is concerned, it is required to be noted that, it has been found by the Labour Court that the concerned workman was already employed during the intervening period and that he was earning Rs.200/- per month. Considering the nature of the post which the respondent was holding, in my view, it is not possible to believe that he might not have received adequate remuneration. The learned Advocate appearing for the respondent submitted that the Court may suitably amend the Award in connection with the payment of back wages.

Considering the aforesaid facts of the case and considering the consensus prevailing between the parties, while confirming the order of reinstatement, I direct that towards back wages, the petitioner shall pay, in all, Rs.25,000/- to the respondent-workman. Mr.Thakkar,

learned Advocate appearing for the petitioner, submitted that the Authority will pass appropriate order for reinstatement of the respondent immediately, and, at any rate, within a period of two weeks from today. He further submitted that the amount in question, which is quantified at Rs.25,000/-, towards back wages, will be paid to him within four weeks from today.

In view of what is stated above, the order of the Labour Court is modified. So far as the order of reinstatement is concerned, the said order is confirmed and so far as payment of back wages to the extent of 85% is concerned, the petitioner is directed to pay Rs.25,000/- towards back wages to the respondent-workman. It is needless to say that the respondent will be entitled to all his regular salary.

The petition is accordingly allowed partly. Rule is made absolute accordingly. No costs.

(P.B. Majmudar, J.)

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(apj)